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Supreme Court of the United States

OCTOBER TERM 1946

No. 610

IN THE MATTER

of

EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co., Inc."),

Debtor,

EQUITABLE OFFICE BUILDING 1913 CO., INC.,

Petitioner,

J. DONALD DUNCAN, as Trustee, *et al.*,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND MOTION FOR LEAVE TO FILE AND BRIEF IN SUPPORT THEREOF.

STUART McNAMARA,
CHARLES GREEN SMITH,
Counsel for Petitioner,
120 Broadway,
New York 5, N. Y.

October 10, 1946.

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Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI

Now, come Stuart McNamara and Charles Green Smith, counsel for the petitioner above named, and respectfully move this Court, to the extent that the accompanying petition seeks relief pursuant to Section 262 of the Judicial Code (28 U. S. C., Sec. 377) for leave to file the petition for certiorari, hereto annexed, under said Section 262, directed to the United States Circuit Court of Appeals for the Second Circuit, to review an order of that Court, entered July 31, 1946, more particularly described in the petition, and for such other and further relief as may be just and proper.

Stuart McNamara,
Charles Green Smith,
Counsel for Petitioner,
120 Broadway,
New York 5, N. Y.

October 10, 1946.

Supreme Court of the United States

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EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co., Inc."),
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Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATES JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Equitable Office Building Corporation, Debtor (name changed to "Equitable Office Building 1913 Co., Inc."), respectfully applies for a writ of certiorari (1) under Section 240(a) of the Judicial Code to review the order of the United States District Court, for the Southern District of New York, denying Debtor's application for an order vacating the order of confirmation of Plan and dismissing the proceedings under Chapter X of the Bankruptcy Act, which order is now on appeal in the United

States Circuit Court of Appeals, for the Second Circuit, and (2) under said Section 240(a), and in the alternative, under Section 262 of the Judicial Code, to review the order of said Circuit Court of Appeals denying Debtor's application for a stay of consummation of Plan pending the petitioner's said appeal.

A certified transcript of the pertinent portions of the record in the proceedings, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38, paragraph 1, of the Rules of this Court.

Opinions Below

Neither the District Court nor the Circuit Court of Appeals rendered an opinion.

Jurisdiction

This Court has jurisdiction under Secs. 24 and 121 of the Bankruptcy Act (11 U. S. C. 11, 47, 521), Sec. 240 of the Judicial Code (28 U. S. C. Sec. 347), and, in the alternative, under said Sections of the Bankruptcy Act and 262 of the Judicial Code (28 U. S. C. 377).

Summary Statement of Case

On April 10, 1941 when said proceedings were commenced, the Debtor owned and operated the Equitable Office Building at 120 Broadway, covering a block in the financial district of the City of New York; and, being unable to pay its debts as they matured, although not insolvent, filed a voluntary petition for reorganization, in the District Court of the United States for the Southern District of New York, which was immediately approved, and J. Donald Duncan was appointed Trustee and H. E. Miller Additional Trustee (R. 1).

The Debtor's funded debt and capital stock consists of the following, as at April 30, 1946 (R. 327, 328, 330):

FUNDED DEBT:

First Mortgage		$15,880,543.35
6% Gold Mortgage Bonds, due May 1, 1943	$ 3,000.00	
Accrued and unpaid interest thereon through May 1, 1946	990.00	3,990.00
Thirty-five year 5% Sinking Fund Debentures due May 1, 1952	$4,754,000.00	
Accrued and unpaid interest thereon through May 1, 1946	1,069,650.00	5,823,650.00
		$21,708,183.35

CAPITAL STOCK:

Authorized, issued and outstanding, no par	862,098 shares

All defaults in respect of the First Mortgage have been cured (R. 192, 327, 330).

On December 4, 1945 a plan of reorganization, submitted by the Trustee on May 11, 1945, was approved by the District Court (R. 175), and on May 13, 1946, the Plan, as amended, was confirmed by said Court (R. 261). The time to appeal from the confirmation order expired without appeal, and on July 8, 1946 an order directing consummation was entered (R. 273), but the Plan has not been consummated, consummation being stayed by order of August 6, 1946 of Mr. Justice Reed pending this Court's action upon the instant and the accompanying petitions, by a stockholders' committee and by two stockholders, for writs of certiorari (R. 360).

The Trustee's Plan (R. 181) was predicated upon a finding that as at December 4, 1945 the land and building of the Debtor had a fair value of $21,375,000 and its other assets a value of $1,205,761.17, making a total of

$22,580,761.17 (R. 177, fol. 531). The Plan provided, among other things, that (a) the claims of unsecured creditors should be paid in full in cash (R. 193, fol. 579), (b) the approximately $16,000,000 principal amount of the outstanding First Mortgage Bond should remain undisturbed (R. 192, fol. 575; R. 194, fols. 581, 582), (c) the $3,000 principal amount of Second Mortgage Bonds should be paid in cash without interest (R. 192, fol. 576), (d) the $4,754,000 principal amount of Debentures (plus about $1,000,000 of accumulated interest) should be exchanged for $2,852,400 principal amount of new 5% Income Bonds and 475,400 shares of new common stock, the income bonds to be convertible into 456,384 additional shares of new Common Stock (R. 193, 195, 196), and (e) the presently outstanding 862,098 shares of Common Stock should be reduced ten to one and exchanged for 86,209.8 shares of new Common Stock (R. 194, fol. 580). Upon exercise of the income bond's convertible rights, the total issue would be 1,017,993.8 new shares (R. 129).

On July 22, 1946, after the confirmation and consummation orders, but before consummation by conveyance of title and issuance of new securities, petitioner received an offer from City Investing Company of New York, a reliable realty corporation, backed by tender of certified check for $517,258.80, (a) to underwrite an offering by the Debtor *pro rata* to its stockholders of 862,098 shares of new Common Stock at $6 per share (an aggregate of $5,172,588) after reducing the presently outstanding stock from 862,098 shares to 86,209.8 shares, and (b), if the District Court should so desire, pending the completion of the new stock issue, to purchase for cash $5,200,000 short term Trustee's certificates, the proceeds to be applied to the payment of the Bonds and Debentures (R. 130, 131, 134, 136).

It is estimated that acceptance and realization of the offer would place the Debtor, after full payment of its Bonds and Debentures, with interest, in possession of about $870,000 cash balance to cover reorganization expenses and provide working capital, to which would be added monthly

about $67,000 net currently realized for general corporate purposes (R. 131, 132, fols. 393-396). The Comptroller of City Investing Company, by projecting income and expenses to October 31, 1947, estimates that if the offer of financing be accepted, Debtor, after paying its Bonds and Debentures with interest, will have a cash balance of $1,524,000 on that date (R. 160, 162).

The offer of City Investing Company provides the liquidity of equity for lack of which Debtor had been compelled to present its original petition for reorganization because of inability to pay its debts as they mature. The value of the real estate as found by the District Court, for the purposes of the Plan, at $21,375,000, compares with an assessed value of $25,650,000 for the tax year 1943-1944, reduced from $28,300,000 by the Supreme Court of New York State (R. 232, fol. 695). Both appraisals were based upon opinion evidence without actual sale or offer of cash financing.

When the Trustee's Plan was presented for acceptance, it was approved by the holders of 163,368 out of 862,098 shares of Common Stock, or only 20%, 27,970 shares voting against the Plan. The small amount of stockholders vote may have resulted from the fact that the Plan offered so little benefit to the stockholders. If the Plan were consummated, 561,609.8 shares of stock would be immediately outstanding, of which the present stockholders would receive 15.3%. If all the new 5% Income Bonds were converted into stock, the present stockholders would hold but 8.4% and the present Debenture holders 91.6% of the total new 1,017,993.8 shares (R. 129, fol. 386).

The realistic offer of new capital financing to the extent of $5,200,000, to pay off the funded debt above the first mortgage, evidences an improvement of market value of Debtor's equity which could be saved for Debtor. For each actual increase of $1,000,000 in value of the real estate over that of $21,750,000 found by the court, for the purpose of the Plan, stockholders' rights under the City Investing offer would be worth about $10 per stockholder's share.

Neither at the time when the Plan was submitted to the stockholders for approval nor, later, when it was confirmed, did the Debtor, its officers, directors or stockholders, know that such an offer as that subsequently presented by City Investing Company could be obtained (R. 129, fol. 387).

On July 23, 1946 petitioner, forthwith upon receipt of the said offer, applied by order to show cause for a vacation of the orders of confirmation and consummation and for a dismissal of the proceedings upon aceptance of the offer and a realization of its proposals (R. 125, 127). A supplemental petition supplied certain formal matters (R. 139).

On July 31, 1946, the District Court, without hearing the merits, but upon an oral statement that petitioner's application raised "a question of time" and that the orders of confirmation and consummation were "in effect" a sale (R. 138, fol. 413), entered an order denying petitioner's application on its face (R. 142), in the manifest erroneous belief that the Court was without power to entertain petitioner's application after the Trustee's Plan had been confirmed and its consummation ordered, although actual consummation had not occurred.

Petitioner, immediately on the same day, filed notice of appeal to the Circuit Court of Appeals (R. 172), and applied to that Court for a stay of consummation pending the appeal. The application for a stay was denied without opinion (R. 423).

On August 2, 1946, petitioner, together with a stockholders' committee and two individual stockholders, severally applied to Mr. Justice Reed for a stay of consummation of the Trustee's Plan pending the filing with this Court of applications for certiorari and action thereon. On August 6, 1946 Mr. Justice Reed granted a stay, with written opinion (R. 360 to 369).

There has been no hearing in the Circuit Court of Appeals, except upon petitioner's application for a stay and like applications by the stockholders' committee and by the two individual stockholders, all of which applications were denied.

Questions Presented

(1) In proceedings under Chapter X of the Bankruptcy Act may a debtor, after an order of confirmation of plan, but before its consummation by transfers of property and delivery of the requisite securities, avail of an improved liquid value of its equity to pay off its creditors in cash and resume control of its property?

(2) Had the District Court power to entertain Debtor's application to dismiss the proceedings, and was there reversible error in the denial of the application on its face?

(3) Was there reversible error in the denial by the Circuit Court of Appeals of a stay pending Debtor's appeal?

Reasons for Granting the Writs

(1) The case presents undecided questions of the effect of Chapter X of the Bankruptcy Act upon Debtor corporations whose realty assets have shared in an upsurge of liquid values since the war, enabling them, if not precluded by a previously confirmed but not consummated plan of reorganization, to pay off their creditors and redeem their equities. An early decision is important not only to such Debtor corporations, but also to their numerous security holders.

(2) An authoritative decision is necessary to determine the application to the instant situation of the fundamental equitable doctrine of a debtor's right to pay his debts and redeem his property. See *Milwaukee & Minnesota R. R. Co.* v. *Soutter*, 69 U. S. 510, 521.

(3) Unless a stay of consummation is ordered pending final disposition of this cause, Debtor's properties will have been conveyed, its debentures exchanged for new Income Bonds with convertible rights; and the new bonds and stock widely traded in on the Stock Exchange and over the counter,

before the decision. If the final decision sustain Debtor's contention here, there would be no adequate remedy to restore the *status quo ante,* notwithstanding purchasers of the new securities would take with notice of this pending litigation. The damage would be incalculable.

(4) The public interest will be promoted by prompt settlement in this court of the questions involved.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record of all proceedings had in this case in said Circuit Court of Appeals, to the end that this case may be reviewed and determined by this Court, as provided in the statutes of the United States, and that the orders herein of the said United States District Court and of said Circuit Court of Appeals may be reversed by this Court, and for such other and further relief as may seem proper.

October 10, 1946.

STUART MCNAMARA,
CHARLES GREEN SMITH,
Counsel for Petitioner,
120 Broadway,
New York 5, N. Y.

Supreme Court of the United States

OCTOBER TERM 1946

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IN THE MATTER

of

EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co., Inc."),
Debtor,

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Petitioner,

J. DONALD DUNCAN, *as Trustee, et al.,*
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

The Decisions to Be Reviewed

The decisions to be reviewed are the order of the District Court, of July 31, 1946 (R. 142) denying Debtor's petition to vacate the orders of confirmation and consummation and to dismiss the proceedings, upon the acceptance and realization of the offer by City Investing Company of new capital financing; and the order of the Circuit Court of Appeals of July 31, 1946 (R. 423) denying Debtor's application for a stay of consummation pending Debtor's appeal to that Court (R. 172) from the District Court order.

Jurisdiction

This court has jurisdiction to review the order of the Circuit Court of Appeals under Section 24c* of the Bankruptcy Act (11 U. S. C. 47) and to review the order of the District Court under Section 240a* of the Judicial Code (28 U. S. C. 347(a)), or, in the alternative, under Section 262* of the Judicial Code (28 U. S. C. 377).

Statement of the Case

The material facts are stated in the annexed petition.

ARGUMENT

Summary

1. A debtor in reorganization may, before a confirmed plan has been consummated by delivery of the required securities or transfers of property, pay off its creditors and resume control of its own property.

2. Confirmation of the Plan was a mere step in the proceeding which did not vest the rights of creditors. Nor has there been an intervention of rights which make it inequitable now for Debtor to recover its property by paying its debts.

3. The District Court had power to grant Debtor's petition to vacate the order confirming Plan, notwithstanding there was no appeal from that order, and erred in denying Debtor's petition on its face as too late.

4. The stay of consummation, allowed by Mr. Justice Reed pending this application for writs of certiorari, should be continued until the final determination of the

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* Sections shown in appendix.

question presented, to preserve the integrity of the judicial processes and to prevent incalculable confusion and harm which would result from a consummation of the Trustee's Plan and a later reversal of the District Court order.

I

A debtor in reorganization may, before a confirmed plan has been consummated by delivery of the required securities or transfers of property, pay off its creditors and resume control of its own property.

The underlying equitable doctrine was declared in an action to foreclose a mortgage on railroad property (*Milwaukee & Minnesota R. R. Co.* v. *Soutter*, 69 U. S. 510 (1864)). After the sharply contested amount of the debt had been determined, the railroad company offered to pay in full on condition that a receiver be discharged. The court below rejected that proposal. This court said (pp. 521, 522) that the right of defendant to pay its indebtedness and to have the restoration of its property by discharge of the receiver did not depend on the discretion of the Circuit Court.

> "It is a right which the party can claim; and if he shows himself entitled to it on the facts in the record there is no discretion in the court to withhold it. But refusal is error—judicial error—which this court is bound to correct when the matter, as in this instance, is fairly before it."

Bankruptcy courts exercise all equitable powers not prohibited by the Act (*Young* v. *Higbee Co.*, 324 U. S. 204, 214 (1945); *Securities & Exchange Com.* v. *U. S. Realty & Imp. Co.*, 310 U. S. 434, 455 (1940); *Wayne Gas Co.* v. *Owens-Illinois Glass Co.*, 300 U. S. 131, 136, 137).

The remedial purposes of the Act, intended for and conditioned upon the jurisdictional facts of insolvency or inability to pay debts as they mature (Sec. 130), should be

observed to the end of the proceeding. If the Debtor, in the course of the proceeding, through favorable economic changes resulting in improvement in its asset values, or in their liquidity, becomes able to pay its debts as they mature, it is no longer a proper subject of the proceeding. It is not the purpose of the Act to imprison the Debtor in the channel of a proceeding, begun by its voluntary petition and caused, not by insolvency but, by inability to pay debts as they mature, with no other outlet than through a plan of reorganization prepared, approved and confirmed in the continued belief that the Debtor was still unable to pay its debts as they matured, and without knowledge that, before consummation of the Plan, an improvement of liquid asset values would develop to enable Debtor to pay its debts and recover its equity.

In *Deep Rock Oil Corp.*, 113 F. 2d 266, 269, C. C. A. 10 (1940), there were questions of priority between preferred stock and a claim. The court said:

> "If before the final consummation of any plan of reorganization the assets of Deep Rock should so increase in value that there would be a substantial equity to be applied to the satisfaction of Standard's claim, the court under its broad equitable powers would have power to procure a modification of the Plan to make available this equity to Standard."

Gerdes in his work on *Corporate Reorganizations*, Sec. 1153, says:

> "A dismissal of a reorganization proceeding may also be equitable where the debtor has, during the pendency of the proceeding, become solvent and liquid enough to pay all of its debts in full as they mature."

Debtor's proposal of capital financing is not a "Plan" under Sec. 216(1) or a modification of Plan under Sec. 222. Since a plan necessarily contemplates insolvency or inability of the Debtor to pay its debts as they mature, the Act provides (Sec. 216(1)) that the Plan "shall include in

respect to creditors generally or some class of them, • • • provisions, altering or modifying their rights, either through the issuance of new securities of any character or otherwise". Debtor's proposal avoids the necessity of such "Plan" by offering the creditors full payment. The fact that Debtor's proposal to the Debenture holders of full payment, with interest, has provoked their opposition, shows they hope to gain something better, through the operation of the Plan, than full payment of their debts, namely, 91.6% of the Debtor's equity of an improved value reflected in an advanced market value of their Debentures, which carry convertible rights to the new stock (R. 129). As Mr. Justice Reed said in granting the stay: "A court of reorganization guards with equal solicitude the equity of stockholders and the priority of creditors" (R. 369).

The fact of improved value is sufficiently proven by the fact of the cash offer. It is supported by the projected estimate of earnings by the Comptroller of City Investing Company, showing that if the offer be accepted, Debtor, after paying its bonds and debentures with interest, will have a cash balance of $1,524,000 on October 31, 1947 (R. 160, 162).

II

Confirmation of the plan was a mere step in the proceedings which did not vest the rights of creditors. Nor has there been an intervention of rights which make it inequitable now for debtor to recover its property by paying its debts.

The District Court denied petitioner's application to vacate the order of confirmation and dismiss the proceedings because, apparently, he considered the application to be too late. His comment was that the application raised "a question of time" and that the orders of confirmation and consummation were "in effect" a sale, although there

had not been consummation (R. 138). That view gave erroneous importance and finality to the order of confirmation.

The important steps in the Chapter X proceeding are filing of original petition (Sec. 130), preparation of Plan (Sec. 216), confirmation of Plan (Sec. 221), consummation of Plan (Sec. 224) and final decree "upon the consummation" (Sec. 228). It has been held repeatedly that the order of confirmation is but a step in the proceeding (*Meyer* v. *Kenmore Hotel Co.*, 297 U. S. 160, 165 (1936); *Wright* v. *City Natl. Bank & Trust Co.*, 104 F. 2d 285, 287 C. C. A. 6th (1939); *In re Eastern Utilities Investing Corp.*, 98 F. 2d 620, 623, C. C. A. 3rd (1938); *Kimm* v. *Cox*, 130 F. 2d 721, 732, C. C. A. 8th (1942)) and is not the equivalent of the final discharge *Wright* v. *City Natl. Bank & Trust Co.*, supra; *Meyer* v. *Kenmore Hotel Co.*, supra; *In re Peyton Realty Co.*, 148 F. 2d 771, 773, C. C. A. 3rd (1944).

In *Pfister* v. *Finance Corp.*, 317 U. S. 144, November, 1942, this court said, through Mr. Justice Reed, p. 152:

> "Courts of bankruptcy are courts of equity without terms * * *. The entire process of rehabilitation, reorganization or liquidation is open to re-examination out of time by the District Court, in its discretion and subject to intervening rights. Cf Wayne Gas Co. *v.* Owens-Illinois Co., 300 U. S. 131, 137; Bowman *v.* Loperena, 311 U. S. 262, 266."

It has been assumed that a bankruptcy court, under its equity powers, may set aside a plan, fair and equitable when adopted, on account of subsequent changes in economic conditions of the region or the nation, provided that the changes are of a kind that were not envisaged and considered in the deliberations upon the Plan (*Reconstruction Finance Corp.* v. *Denver & R. G. W. R. Co.*, 90 Law. Ed. 1134, 1148, June, 1946). Here the changed economic conditions were not considered in the preparation of the Plan because they had not then developed to a point where they could be availed of. Hence, failure of the Debtor to appeal

from the order of confirmation is irrelevant since Debtor's proposal could not have been reviewed by an appeal (R. 129, fol. 387).

It will hardly be contended that the order of confirmation, *ipso facto,* irrevocably vested in the Debenture holders rights to the new securities provided them in the Plan, for that would ignore the express provisions of Sec. 222 permitting modifications of the Plan after confirmation, even if they "materially and adversely affect the interests of creditors." It would disregard, also, the underlying right of a debtor to avail of changed conditions, as here, to offer full payment to its creditors. A class of creditors whose claims are to be paid in cash in full are obviously not adversely affected (2 *Gerdes on Corporate Reorganization,* Sec. 1046). Dealings by Debenture holders or outsiders in the Debtor's stock on the Exchange or in the Debentures over the counter have not vested the purchasers in interests by which they may resist the relief here sought by the Debtor, for such purchasers take with knowledge of the limited effect of an order of confirmation in distinction from a final decree. At the end of the order of confirmation the court reserved jurisdiction (R. 267). The power of the court to amend or vacate its confirmation order does not depend upon daily market transactions in the Debtor's securities.

III

The District Court had power to grant debtor's petition to vacate the order confirming plan, notwithstanding there was no appeal from that order and, erred in denying debtor's petition on its face as too late.

The power of the bankruptcy court to change or vacate its orders is not affected by the fact that no appeal was taken. *Wayne Gas Co.* v. *Owens-Illinois Glass Co.,* supra; *In re 1934 Realty Corp.,* 150 F. 2d 477, C. C. A. 2nd (1945).

IV

The stay of consummation, allowed by Mr. Justice Reed pending this application for writs of certiorari should be continued until the final determination of the questions presented, to preserve the integrity of the judicial processes and to prevent incalculable confusion and harm which would result from a consummation of the Trustee's plan and a later reversal of the District Court order.

This court has power to correct the error of the Circuit Court of Appeals in denying a stay which should be continued until the final determination of the questions presented (see topic "Jurisdictions" *supra*, p. 12, *Landis* v. *North American Co.*, 299 U. S. 248 (1936); *Porter* v. *Dicken*, 90 Law. Ed. 959 (1946)).

Conclusion

This court should grant the writ to review the District Court order denying petitioner's application to vacate the order of confirmation and dismiss the proceedings, and the writ to review the order of the Circuit Court of Appeals denying a stay.

Respectfully submitted,

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October 20, 1946.

Appendix

Sec. 24c. of the Bankruptcy Act: (11 U. S. C., Sec. 47)

"The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Court of Appeals of the United States and the United States Circuit Court of Appeals of the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted."

Sec. 240a of the Judicial Code: (28 U. S. C., Sec. 347a)

"Certiorari to circuit courts of appeals and Court of Appeals of District of Columbia; appeal or writ of error to Supreme Court from circuit courts of appeals in certain cases; other reviews not allowed. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such a lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

Sec. 262 of the Judicial Code: (28 U. S. C., Sec. 377)

"Power to issue writs. The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (R. S. Sec. 716; Mar. 3, 1911, c. 231, Sec. 262, 36 Stat. 1162.)